

REMARKS

I. Status of the Claims

Claims 1, 2, 5 and 8 are pending in the application, under consideration, and stand rejected under 35 U.S.C. §102 and/or §103. The specific grounds for rejection, and applicant's response thereto, are set out in detail below.

II. Priority Claim

A. *Figures Missing from the Provisional Filing*

The examiner has indicated that applicants' priority date is May 14, 2003. However, as indicated in the submission made by previous counsel on May 9, 2003, "figures were submitted as part of the original specification" Thus, the Notice of Incomplete Provisional Application, mailed March 14, 2003, was factually incorrect.

Applicants believe that although the submission made by previous counsel on May 9, 2003, was accurate and true, it may be incorrectly submitted as a "Response" and not a petition, as indicated in the March 14, 2003 notice. Applicants are therefore resubmitting the substance of the May 9, 2003 response in the form of a petition. With the granting of this petition, applicants believe their priority date will be January 16, 2003.

B. *Difference Between Inventorship of Provisional and Non-Provisional*

The examiner has denied priority to the provisional application on the grounds that the provisional application contains an additional inventor as compared to the instant non-provisional application. Applicants point out that there is no requirement for *identity* of inventorship to enable a priority claim; rather, a single common inventor is all that is required.

However, in the interest of resolving the issue, applicant has filed a correction to the inventorship of the provisional application, a copy of which is enclosed herewith. Thus, the priority claim should now be deemed proper.

III. Rejections Under 35 U.S.C. §102

A. §102(f) Rejection

Claims, 1, 2, 4 and 8 stand rejected over Eystathioy *et al.* (2003). Applicants traverse. The basis for the rejection is that applicant did not invent that which is now claimed. With granting of applicant's claim for priority, Eystathioy *et al.* (2003) is no longer prior art against the instant application. As such, there is no evidence of record to support the rejection. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

B. §102(a) Rejection

Claims 1, 2, 4 and 8 are rejected over Eystathioy *et al.* (2003). Applicants submit that the granting of applicant's claim for priority to the related provisional application, U.S. Serial No. 60/440,326, will remove the Eystathioy *et al.* (2003) publication, thereby overcoming the rejection. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

IV. Rejection Under 35 U.S.C. §103


Claims 1 and 8 stand rejected over Eystathioy *et al.* (2002) in view of Kohler. Applicant traverses. With acceptance of applicant's priority claim of January 16, 2003, Eystathioy *et al.* (2002) becomes §102(a) art. Applicant is providing a declaration under 35 U.S.C. §132 that explains the non-inventive contributions of the authors of Eystathioy *et al.* (2002) that are not

named as inventors. Thus, Eysthatioy *et al.* (2002) is not “by another” and cannot qualify as art under §102(a). Reconsideration and withdrawal of the rejection is therefore respectfully requested.

V. Conclusion

In light of the foregoing, applicants respectfully submit that all claims are in condition for allowance, and an early notification to that effect is earnestly solicited. Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants’ representative at (512) 536-3184.

Respectfully submitted,


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